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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,035	01/13/2004	Patrick Bousfield	03924/100M458-US1	3243

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EXAMINER	
THANH, QUANG D	
ART UNIT	PAPER NUMBER
3764	

DATE MAILED: 08/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/757,035	BOUSFIELD ET AL.	
	Examiner	Art Unit	
	Quang D. Thanh	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 January 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-27* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-27* is/are rejected.

7)☒ Claim(s) *13-15 and 18-21* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *1/13/04*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Re claim 1, "each seat being affixed relative to the rotor at one or more locations proximal to the ***exterior*** face" is unclear and appears to be incorrect. The seat should be proximal to the interior face (and not to exterior face as claimed).

4. Re claim 13, "whereby ***vibrations*** are imparted to the metal balls for applying an enhanced therapy to the subject" is unclear as to how and what elements would produce the claimed "vibrations" ?

5. Re claim 15, "the first element" lacks antecedent basis, and "whereby ***vibration*** can be selectively applied to the subject by upon exchanging ***one element*** ? ***for*** ? (of ?) the second feature for ***another*** ?" is unclear as to how the vibration is produced and how does exchanging element would selectively provide vibration.

6. Re claim 18, "the pivotal movement" lacks antecedent basis, and "the ***second*** motor having a biasing element" appears to be incorrect (the motor has the biasing element 518 and not the second motor as claimed).

7. Re claim 19, "the second cam" lacks antecedent basis.

8. Re claim 20, "the first motor" and "the first and second cams" lack antecedent basis.

9. Re claim 21, "the first motor" , "the first and second cams", and "the fixed first cam" lack antecedent basis

10. The rest of the claims are rejected because they depend on a rejected claim.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

12. Claims 1-4, 6-7, 16-17, 22-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones (6,102,875) in view of Moriyama et al. (4,082,089).

13. Re claims 1-4, 6-7 and 22, Jones discloses an apparatus for applying massage, accupressure and biomagnetic therapy to a subject, the apparatus comprising: a housing 12a-b having a proximal end and a distal end (fig. 2); a motor 14 (fig. 2) disposed within the housing and having a shaft 20, a magnet 38 disposed within the housing about the shaft (fig. 2); a rotor 18 rotatably supported by the shaft at the distal end of the housing, the rotor has a collar 22 that detachably interlocks with a sleeve 24 associated with the shaft (fig. 2), the rotor having an exterior face which is remote from the magnet and which defines a plurality of entrances 34, an opposing interior face proximate to the magnet, a plurality of metal balls 36 which are seatable against a

plurality of tabs 40 (fig. 3) and retained within the entrances of the rotor solely by a magnetic field emanating from the magnet, each ball having a center and being universally rotatable about its center; and wherein the tabs precludes contact of the metal balls with the magnet and counters forces applied to the balls when the apparatus applies therapy to the subject, except that the tabs are not in the form of a seat. However, Moriyama et al. teaches a massage instrument having a ball 17 that is held by a spherical inner face seat 16 (fig. 2) comprising a solid surface dome having a shape substantially complementary to the metal ball 17, a substantially hemispherical surface having a concavity sized to receive at least a portion of the metal ball and wherein the concavity includes one or more bumps 15 disposed thereupon, the bumps defining a contact surface for the metal ball (fig. 2). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the device in the Jones' reference, to include spherical inner face seat affixed to the rotor such that the seat would partially cover and hold the ball deep within the seat, as suggested and taught by Moriyama, for the purpose of providing a supporting means that would hold the ball more secure and thus allowing more effective massaging (col. 3, lines 30-39).

14. Re claims 16-17, since Jones also teaches that "vibration and rotational motions of balls 36 could be combined and the construction of motor driven handheld vibrators is well known in the art" (col. 4, line 65 to col. 5, line 1), therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the device in the Jones' reference, to include a second motor, for the purpose of providing a

combination of vibration and rotational motions of balls thus enhancing the effectiveness of the massaging action.

15. Re claims 23-27, Jones discloses an apparatus for applying massage, accupressure and biomagnetic therapy to a subject, the apparatus comprising: a housing 12a-b having a proximal end and a distal end (fig. 2); a motor 14 (fig. 2) disposed within the housing and having a shaft 20, a magnet 38 disposed within the housing about the shaft (fig. 2); a rotor 18 rotatably supported by the shaft at the distal end of the housing, the rotor has a collar 22 that detachably interlocks with a sleeve 24 associated with the shaft (fig. 2), the rotor having an exterior face which is remote from the magnet and which defines a plurality of entrances 34, an opposing interior face proximate to the magnet, a plurality of metal balls 36 which are seatable against a plurality of tabs 40 (fig. 3) and retained within the entrances of the rotor solely by a magnetic field emanating from the magnet, each ball having a center and being universally rotatable about its center; and wherein the tabs precludes contact of the metal balls with the magnet and counters forces applied to the balls when the apparatus applies therapy to the subject, except that the tabs are not in the form of a substantially continuous abutment. However, Moriyama et al. teaches a massage instrument having a ball 17 that is held by a magnet 14 (fig. 2) comprising a substantially continuous abutment 16 (fig. 2) having a plurality of projections 15 in the form of a permanent ring magnet comprises a taper extending into the apertures (best seen in fig. 2) and the metal ball 17 having more than 50% within the plurality of apertures. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to

modify the device in the Jones' reference, to include a permanent ring magnet affixed to the rotor such that it would partially cover and hold the ball deep within the seat 16, as suggested and taught by Moriyama, for the purpose of providing a supporting means that would hold the ball more secure and thus allowing more effective massaging (col. 3, lines 30-39).

16. Claims 1, 4-5, 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones (6,102,875) in view of Leshin (2,968,826). Jones discloses all the claimed features except that the tabs are not in the form of a seat. However, Leshin teaches a dispensing device having a ball 21 that is held by a seat 14 (fig. 3-4) having a substantially hemispherical surface and including a plurality of windows (fig. 4), a plurality of fingers 18 each having a linear shape (fig. 4); the fingers and seat defining a cage (fig. 4) for receiving the ball 21 , each cage has an interior space in communication with a respective entrance and has a size sufficient to permit an associated ball to be received; and adjacent fingers 18 are spaced from one another (fig. 4). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the device in the Jones' reference, to include a cage having a seat and fingers such that the cage would partially cover and hold the ball deep within the seat, as suggested and taught by Leshin, for the purpose of providing a supporting means that would hold the ball more secure and thus allowing more effective massaging.

Allowable Subject Matter

17. Claims 13-15 and 18-21 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Scholz '776 teaches a ball pen having a seat for receiving a ball.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang D. Thanh whose telephone number is (571) 272-4982. The examiner can normally be reached on Monday-Thursday & alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson can be reached on (571) 272-4887. The Central FAX phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for all communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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